

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

DIGITAL MEDIA SOLUTIONS, LLC,	)	CASE NO. 1:19-cv-145
	)	
Plaintiff,	)	JUDGE DAN AARON POLSTER
	)	
v.	)	
	)	
SOUTH UNIVERSITY OF OHIO,	)	
LLC, <i>et. al.</i> ,	)	
	)	
Defendants.	)	

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APPLICATION OF RECEIVER TO RETAIN DIAMOND MCCARTHY  
AS ATTORNEYS FOR THE RECEIVER IN CALIFORNIA

NOTICE OF DEADLINE FOR THE FILING OF OBJECTIONS

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Mark E. Dottore, the duly appointed and acting receiver herein (the “**Receiver**”), respectfully represents to the Court that, in order to fulfill his duties to marshal and preserve the Receivership Entities and the Receiver Property<sup>1</sup> and to address immediate legal exigencies in California regarding the termination and foreclosure of real estate leases and certain pending litigation, he will require the assistance of attorneys. To that end, and pursuant to the Order Appointing Receiver, the Receiver requests that the Court enter an order authorizing him to engage the firm of Diamond McCarthy LLP (“**Diamond**”) and Kathy Bazoian Phelps, Partner (“**Ms. Phelps**”) as his counsel for appearances on his behalf in California and perhaps contiguous states. In support of this request, the Receiver

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the Order Appointing Receiver [Docket no. 8].

submits that Ms. Phelps's rate is \$675, but that she anticipates that the work will be performed by associates whose rates are lower. A rate list is attached to Ms. Phelps's Verified Statement which is attached as Exhibit A. The Receiver expects that upon completion of the tasks described herein, the retention will be reviewed to determine if efficiencies can be effected.

In support of this Application, the Receiver says as follows:

### **Jurisdiction and Venue**

1. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act of 1933 (the "**Securities Act**") [15 U.S.C. § 77v] and Section 27 of the Securities Exchange Act of 1934 (the "**Exchange Act**") [15 U.S.C. § 78aa].

2. Venue is proper in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa].

3. The relief sought in this Application is governed by FED. R. CIV. P. 66, Rule 66.1(c) and (d) of the Local Rules for the United States District Court for the Northern District of Ohio, and the Order Appointing Receiver.

### **Diamond's Qualifications**

4. Ms. Phelps is a nationally known receivership lawyer and a member of the National Association of Federal Equity Receivers. She is also the co-author of the book, "*The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes.*" Diamond and Ms. Phelps are well qualified for the tasks at hand.

5. To the knowledge of the Receiver, Diamond represents no interest adverse to that of the within receivership estate.

**Services To Be Provided by Diamond**

6. The Receiver anticipates that Diamond will perform the following legal services:

- Representing the receivership estate in matters residing in California and perhaps contiguous states where the lawyers are licensed. The work pertains to leases in at least two lease locations, which have imminent court proceedings currently scheduled. In addition, there is pending litigation which requires a stay or resolution and for which court filings will be required. Diamond may also be asked to represent the Receiver in any new litigation which might be filed.

7. The address of proposed counsel is as follows;

Kathy Bazoian Phelps, Esq.  
Diamond McCarthy LLP  
1999 Avenue of the Stars, Suite 1100  
Los Angeles, CA 90067  
Telephone: 310.651.2997  
Email: kphelps@diamondmccarthy.com

**Notice**

8. Notice of this motion will be given to all counsel of record by operation of the Court's electronic filing system. In light of the nature of the relief requested herein, the Receiver submits that no other or further notice is required.

WHEREFORE, the Receiver respectfully requests that this Court enter an order substantially in the form of the attached Exhibit B, authorizing him to retain Diamond as his counsel for this limited engagement, and granting such other and further relief as the Court may deem proper.

**NOTICE OF DEADLINE FOR THE FILING OF OBJECTIONS**

**PLEASE TAKE NOTICE** that this Application is filed for the purpose of providing information to the parties and other persons interested in these proceedings. Any objection to this Application must be filed within 14 days from the date of service as set forth on the certificate of service. If no response or objection is timely filed, the Court may grant the relief requested without further notice.

**PLEASE TAKE FURTHER NOTICE** that pursuant to Local Rule 66 and in accord with the practice in the administration of bankruptcy estates in this district, Diamond and Ms. Phelps will commence representation immediately upon the filing of this Application.

Date: January 31, 2019

**WHITMER & EHRMAN LLC**

/s/ Mary K. Whitmer

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jwe@weadvocate.net

*Attorneys for the Receiver*

### **CERTIFICATE OF SERVICE**

I hereby certify that on January 31, 2019 a copy of the foregoing *APPLICATION OF RECEIVER TO RETAIN DIAMOND MCCARTHY LLP AS ATTORNEYS FOR THE RECEIVER IN CALIFORNIA* was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties on the Electronic Mail Notice List as set forth below. Parties may access this filing through the Court's system.

/s/Mary K. Whitmer

Mary K. Whitmer (0018213)

*Attorney for the Receiver*